1913.

Present : Lascelles C.J. and De Sampayo A.J.

ARUNASALEM v. RAMASAMY.

415—D. C. Colombo, 36,453.

Prescription—Part payment—Acknowledgment of debt and promise to pay the balance.

A payment on account is necessarily an acknowledgment of debt, and the law, in the absence of anything to the contrary, implies from an acknowledgment of the debt a promise to pay the balance. This implied promise creates a new obligation and takes the debt out of the operation of the statute, and this is so even though at the date of payment the debt may have been already statute-barred. The implication of a promise may be rebutted by any special circumstances attending the payment.

THE facts appear from the judgment.

J. Joseph, for the defendant, appellant.—The plaintiff claims wages from July 1, 1910, to May 20, 1913. The only item of payment by defendant was in September, 1912. The action was instituted on May 29, 1913. All wages due before May 29, 1912, are barred. One payment made within a year of action keeps alive the entire claim. See *Usuf Saile v. Punchirala* [1]. For a part payment to take a claim out of prescription, it must have been made under circumstances implying an acknowledgment of indebtedness and a promise to pay the balance. See *Silva v. Don Louis*,[2] *Murugupillai v. Muttelingam*.[3] The plaintiff must prove that the payment was made under such circumstances.

Arulanandam, for the plaintiff, respondent.—In *Usuf Saile v. Punchirala* [1] it was held that an item of purchase by the defendant within one year of action does not keep the whole debt alive as against the defendant. It was not a case of part payment. Part payment of a debt is in itself an acknowledgment of debt, and a promise to pay the balance can be inferred therefrom.

Cur. adv. vult.

[1] *(1904) 1 Bal. 36.*

[2] *(1897) 7 Tamb. 74.*

[3] *(1894) 3 O. L. R. 92.*

January 13, 1914. DE SAMPAYO A.J.—

The plaintiff, who was employed as a dairyman under the defendant, sues the defendant for a sum of Rs. 370.50 as balance of wages due to him from July 1, 1910, to May 20, 1913. The payments for which credit has been given were made to the plaintiff in September, 1912. The action was instituted on May 29, 1913, and the defendant pleads that the plaintiff's claim for wages prior to May 29, 1912, is barred by prescription. The point for consideration on this appeal is whether the payments in September, 1912, take the case out of prescription. The District Judge, relying on *Moortiapillai v. Sivakaminathapillai*,[1] has decided the question in the affirmative, and I think his decision is right. Counsel for defendant, however, cited *Silva v. Don Louis*,[2] and contended that it should have been proved by evidence that the payments were made under circumstances implying an acknowledgment of indebtedness and a promise to pay the balance. The contention, so far as it means that it was for the plaintiff to prove anything more than the fact of an absolute payment on account, is not well founded. Neither in the English Statute of Limitations nor in our Ordinance of Prescription is there any express provision regulating the effect of a part payment; all that Lord Tenterden's Act and our Ordinance No. 22 of 1871 do is to provide that the enactments requiring an asknowledgment to be in writing shall not "alter, take away, or lessen the effect of any payment of any principal or interest." The reason for the absence of such express provision is obvious. A payment on account is necessarily an acknowledgment of the debt, and the law, in the absence of anything to the contrary, implies from the acknowledgment of the debt a promise to pay the balance. (*Fordham v. Wallis*.[3]) This implied promise creates a new obligation and takes the debt out of the operation of the statute, and this is so even though at the date of payment the debt may have been already statute-barred. Of course, the implication of a promise may be rebutted by any special circumstances attending the payment, as where the payment is not on account but purports to be in satisfaction of the entire demand (*Taylor v. Hollard* [4]), or where the debtor says he will not pay the balance (*Wainman v. Kynman* [5]) or where the payment is compulsory under some legal proceedings (*Morgan v. Rowlands* [6]). Such as these are, I think, the circumstances alluded to in the case cited from *7 Tamb. 74*, but in the present case there is an entire absence of such qualifying circumstances. The evidence shows that the payments made in September, 1912, were so made by the defendant without any reservation on account of the accumulated arrears of salary due to plaintiff at that date. If anything further took place between the parties sufficient to

[1] *(1910) 14 N. L. R. 30.*
[2] *(1897) 7 Tamb. 74.*
[3] *(1852) 10 Hare 225*
[4] *(1902) 1 K. B. 676.*
[5] *(1847) 1 Ex. 118.*
[6] *(1872) 7 Q. B. 493.*

1918.

DE SAMPAYO A.J.

Arunasalem v. Ramasamy

" alter or take away or lessen the effect " of the payments, it was for the defendant to satisfy the Court on that point, and in the absence of any such evidence, the defendant by his payments not only acknowledged the existence of the debt, but must be taken in law to have promised to pay the balance. In my opinion the payments took the case out of the operation of the Ordinance, and the defendant's plea of prescription cannot be sustained.

I would dismiss the appeal with costs.

LASCELLES C.J.—I entirely agree.

Appeal dismissed.